

# CAUTIOUS CREDITOR®

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## UCC FINANCING STATEMENTS: FILING AND SEARCHING UNDER REVISED ARTICLE 9

Revised Article 9 of the Uniform Commercial Code (UCC) will become law in Indiana and at least 24 other states on July 1, 2001. Thirteen additional states are considering adoption. Previous editions of the *Cautious Creditor*® have described some of the impact of Revised Article 9 on secured transactions. This issue addresses the new statute's significant revisions to the procedures for filing financing statements and conducting searches for financing statements.

### **Creditor May Be Required to File Financing Statement in a Different State**

One key goal of Revised Article 9's drafters was to require the filing of only one financing statement for each secured transaction. In order to achieve that goal, the drafters made dramatic changes to the choice of law provisions governing filing and perfection. Under the new law, almost all financing statements will be filed in the state where the debtor is located, regardless of the type of collateral involved in the transaction. (See exceptions below.)

The impact of this "location of the debtor" filing rule is amplified by Revised Article 9's new rules for determining a debtor's legal location. Under current Article 9, a corporation is located in the state of its place of business or, if it has more than one place of business, the state of its chief executive office. Under Revised Article 9, a corporation is located in the state of its organization. For example, a Delaware corporation, whose place of business, chief executive office and assets are in Indiana, is located in Indiana under current Article 9. However, that same corporation will be located in Delaware for filing purposes under Revised Article 9. A financing statement filed in Indiana after July 1, 2001, will fail to perfect a security interest in such a corporate debtor's collateral.

This new rule applies also to limited liability companies, limited partnerships and any other entity required to register its charter with a state.

For many individual debtors, the filing location also will change. Under current Article 9, a sole proprietor's location is his or her place of business, or the chief executive office if there is more than one place of business, or his or her residence if there is no place of business. Under Revised Article 9, an individual debtor is always located at his or her residence. This means that a sole proprietor who owns a business in Illinois but occupies a residence in Indiana will be located only in Indiana for filing purposes under Revised Article 9.

Under Revised Article 9, there is no longer any requirement to determine and monitor continuously the location of collateral. No matter where the collateral may be moved, the creditor's security interest will remain perfected so long as the financing statement filed in the debtor's state of location remains effective.

### **Limited Exceptions to the "Location of the Debtor" Rule – Local Filing**

Revised Article 9 centralizes almost all financing statement filings in a single filing office in each state (in Indiana, the Office of the Secretary of State). Local filings are abolished, with three exceptions. Financing statements will continue to be filed in county filing offices when the collateral is (1) fixtures, (2) timber which is not yet cut, or (3) minerals which are not yet extracted from the ground. In these limited cases, a Revised Article 9 financing statement should be filed in the county where the collateral and related real property are located, without regard to the location of the debtor.

Indiana's enactment of Revised Article 9 contains an additional temporary local filing exception. Where the debtor is located in Indiana and the collateral is farm products, farm equipment or farm accounts, a financing statement must be filed in the county recorder's office until June 30, 2002. After that date farm-related financing statements must be filed in the Indiana Secretary of State's Office.

### **Impact on Current Financing Statements**

After July 1, 2001, Revised Article 9 will govern all secured transactions within its scope, even those concluded before the new statute's effective date. Therefore creditors must take care that currently perfected security interests are preserved under the new law. In many transactions, Revised Article 9 will direct filing in the same filing office as under current law. In such cases, a creditor need only continue to follow the same rules for amendment, continuation and termination of its financing statement.

In many other cases, however, Revised Article 9 will designate a new filing office in the same state or in a different state. Even in these cases, the creditor need not act immediately to preserve the perfection of its security interest because Revised Article 9 provides for "grandfathering" of existing filed financing statements. A financing statement which is valid on June 30, 2001, but is not filed in the filing office designated under Revised Article 9, will remain valid in the original filing office for the same period as under current Article 9. However such a grandfathered financing statement cannot be amended or continued in the old filing office. If an old filing office were to accept such amendment or continuation statements, it would do so without effect. The only document which may be effectively filed in the old filing office will be a termination statement.

In order to amend or continue a grandfathered financing statement, a new and specially prepared initial financing statement must be filed in the new filing office designated under Revised Article 9. This initial financing statement must contain all the information required of any financing statement as well as a description of the grandfathered financing statement, the date it was filed and the filing office in which it was originally filed. Such an initial financing statement effectively transfers the grandfathered financing statement to the proper filing office and preserves the original perfection date.

### **Impact on Searching for Financing Statements**

In the long run, Revised Article 9's filing rules will make filing and searching much simpler for creditors. Eventually most prospective lenders will need to search for existing security interests in only one filing office and will need to file their own financing statement only in that same office in order to be perfected. However such simplicity will come only after a five-year period of transition from current law to Revised Article 9. Until July 1, 2006, a prospective creditor must search for financing statements in the filing office designated by Revised Article 9 and in every other filing office which would have been designated under current law.

### **Comment**

After the five-year transition period, the filing and searching provisions of Revised Article 9 should reduce complication and expense for secured creditors. During the transition period, however, creditors will be faced with implementing new filing procedures and conducting searches under both current law and Revised Article 9's rules. Special vigilance will be required to ensure that new financing statements are properly filed, existing financing statements are preserved, and UCC searches are sufficiently thorough.

For more information in this area, please contact **Dennis H. Long** at (317) 236-5964, e-mail: [longd@icemiller.com](mailto:longd@icemiller.com).

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